

**Commission on Child Support
Meeting Minutes**

Thursday, September 30, 2021

1:00 p.m.-5:00 p.m. CDT

Rushmore Room, Department of Social Services (DSS) Office

811 E. 10th Street

Sioux Falls, SD 57103

Join Zoom Meeting

<https://state-sd.zoom.us/j/99598687287?pwd=VWtKd294aStEb01KN3RBN043RVVnZz09>

Meeting ID: 995 9868 7287

Passcode: 934475

Commission Members Present: Chairman Justice Scott Myren; Senator Arthur Rusch; Representative Mike Stevens; Virgena Wieseler, Department of Social Services (DSS) Chief of Children and Family Services; and Rob Simmermon, Non-Custodial Parent. The following members participated via Zoom: Lindsey Riter-Rapp, South Dakota State Bar; Terri Williams, Child Support Referee; and Amber Kinney, Custodial Parent.

Commission Members Absent: None

Others Present: Carmin Dean, Nichole Brooks, Marilyn Kinsman, and Kristen Campbell, Department of Social Services (DSS) support staff; Suzanne Starr, Unified Judicial System (UJS); Jeremy Lippert, DSS Director of Legal Services (via Zoom); and Dr. Jane Venohr, Center for Policy Research (via Zoom). Frank Smith was present to provide testimony. Tom Pischke provided testimony via Zoom.

Call to Order: Chairman Justice Myren called the meeting to order at 1:02 PM CDT. Roll was called and a quorum was determined. Commission members were welcomed and introductions of Commission members and onsite attendees were made. Zoom participants did not acknowledge a desire to provide testimony.

Approval of September 30, 2021 Agenda: A motion was made by Representative Stevens to approve the agenda. Seconded by Rob Simmermon. Motion carried.

Approval of August 26, 2021 Meeting Minutes: Virgena Wieseler asked for a spelling correction from the last name of Steidel to Steidl within the August 26, 2021 meeting minutes. Terri Williams stated the abatement percentage range should be corrected from 38%-60% to 38%-66% in the first sentence, last paragraph on page 5. A motion was made by Senator Rusch to approve the August 26, 2021 meeting minutes as amended. Seconded by Virgena Wieseler. Motion carried.

Approval of August 26, 2021 Public Hearing Minutes: Virgena Wieseler asked for a spelling correction from the last name of Steidel to Steidl within the August 26, 2021 public hearing minutes. A motion was made by Representative Stevens to approve the August 26, 2021 meeting minutes as amended. Seconded by Senator Rusch. Motion carried.

Review Briefing Documents:

- **Income Withholding (Garnishment):** Carmin Dean provided an overview of the Division of Child Support's (DCS) current policies and procedures regarding income withholding (garnishment), and cited federal regulations, state laws, and administrative rules. If a person has applied for services through DCS, and if the child support order contains income withholding language, it requires withholding through DCS to the employer. A copy of the

Income Withholding Order (IWO) is sent to the noncustodial parent to make them aware of the IWO. In a situation where the child support order does not contain income withholding language and if the noncustodial parent owes arrears, DCS will issue a Notice of Withholding along with a copy of the IWO to the noncustodial parent's last known address. If the noncustodial parent does not agree with the action, he/she can request an administrative review. The total amount withheld for cash support and health insurance premiums cannot exceed 50% of an employee's net income after deducting mandatory deductions required by federal law, state law or as a condition of employment, e.g., federal income taxes and any other things required as a condition of employment. Employers may deduct an amount not to exceed \$3 per month from the noncustodial parent's net income to cover the expenses involved in transmitting the garnishment. Payments are transmitted to DCS within seven business days from the date of withholding. Additionally, employers are required to report new hires within 20 days of hire to the Department of Labor and Regulation (DLR). The DLR database is matched nightly against DCS records, and if a match receives a result, an IWO is automatically issued within two business days. Payments received are applied towards the current child support obligation before applying towards arrearages. Payments are split proportionately between the noncustodial parent's cases in situations where the noncustodial parent has multiple cases. Statistically, 61% of child support that the State of South Dakota collects is a result of income withholding. DCS issued 32,196 orders and collected \$62.9 million in FY 2021.

Carmin Dean responded to questions from Commission members. Rob Simmermon questioned how federal obligations, such as student loans, are taken into account. There is a pecking order for withholding that addresses what is withheld from the federal side. Senator Rusch asked what constitutes a tribal employer and how to ensure the employer withholds the child support obligation. What happens when employers do not comply? Notice of Income Withholding is sent via certified mail. Letters may also be sent from the Division of Legal Services to employers to advise them if they fail to comply, they could be held responsible for the amount due to DCS, and fees could also be assessed; typically, employers comply. In the situation of an independent contractor's ability to garnish wages, it depends on how the employee is paid, and the definition of the employer. For example, sometimes employees do not get paid until the job is completed. A question was asked if the \$62.9 million collected is withheld only from South Dakota employers. The amount collected could be withheld by any employer in South Dakota or any out of state employer. South Dakota DCS also honors requests from other states.

- **Consideration:** DCS will provide more information on the order in which child support is withheld/paid before other garnishments and information concerning withholding by tribal employers at the next Commission on Child Support meeting.

License Restriction and Revocation Process: Carmin Dean also provided an overview of DCS' license restriction and revocation process and cited federal regulation, state statutes, and administrative rules that allow restriction and revocation. When a noncustodial parent has a delinquency balance of \$1,000 or more and it equals three months of the monthly child support obligation, a Notice of Intent to Restrict License(s) is issued to the noncustodial parent. The notice is mailed on the 4th of each month and advises the noncustodial parent of DCS' intent to restrict their ability to obtain and/or renew their driver, professional, hunting, and/or fishing license(s) until satisfactory arrangements for repayment are made. The notice advises the noncustodial parent to pay arrearages due, or to enter into a repayment agreement with DCS. Information regarding the right to request an administrative review is also provided. If a restriction is placed on a license, the license cannot be renewed. A restriction is automatically placed on the license(s) on the 20th of the month unless the

noncustodial parent signs a repayment agreement, or pays the arrears in full, or an administrative review is requested. If the noncustodial parent has not paid the arrears in full or entered into a repayment agreement within 90 days of the restriction being placed, a second notice is sent to the noncustodial parent advising them of the restriction. The noncustodial parent may obtain a 180-day temporary permit for a driver license if his/her license is restricted.

If the noncustodial parent has entered into a repayment agreement with DCS and fails to comply, DCS may proceed with revocation of their driver license. The situation must be appropriate to be considered for revocation. For example, if the noncustodial parent is receiving Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) DCS will not seek revocation. If the noncustodial parent is disabled or has a pending claim with the Social Security Administration (SSA), DCS will not seek revocation. If there is an IWO in place and DCS is already receiving 50% of income, DCS will not seek revocation. Or, if the noncustodial parent lost employment due to health, weather, downsizing, etc., revocation will not be sought. In situations where revocation is appropriate, DCS will send a Notice of Nonpayment to the noncustodial parent giving them 30 days to respond. If the noncustodial parent fails to respond within 30 days, a Notice of Intent to Revoke their driver license is sent allowing 13 days for a response. If the noncustodial parent fails to respond timely, DCS notifies the Department of Public Safety (DPS) to revoke his/her driver license. In the event the arrearages are paid in full or a negotiated amount is agreed upon by both DCS and the noncustodial parent, DCS will notify DPS to terminate the revocation process. If the noncustodial parent requests an administrative review, the revocation process is stopped until the review/appeal process has been completed. Statistical information was provided for FY 2019 – 2021 including the number of agreements sent, number of noncustodial parents, number of cases, total amount received, amount toward arrears, number revoked, and number reinstated. Refer to *License Restriction and Revocation Process* handout within the meeting materials.

Carmin Dean responded to comments and questions from Commission members. Senator Rusch stated there are a number of complaints regarding a driver license being revoked, but there are numerous opportunities to get the child support current. His experience has been that people neglect to respond. Representative Stevens also stated there are multiple options; the initial part is restrictions and being unresponsive causes the license to be revoked, and even then, the noncustodial parent is given yet another opportunity. It is a fair operation procedure. Representative Stevens asked Carmin to explain the number of agreements sent, [1,436 in FY 2019] versus the number of cases revoked [564 in FY 2019] and number of cases reinstated [371 in FY 2019]. The noncustodial parent could have multiple cases and may have entered into an agreement in prior years; the license could have been revoked in a previous year. There is a statute that allows DCS to mail notices to the last known address. There is also a statute that the noncustodial parent is to keep DCS notified of his/her current address. Revocation could occur with little notice in advance such as when the noncustodial parent is very delinquent. Representative Stevens stated in his experience, the Department wants to work with people and move to enforce child support compliance; revocation of a license is not typically an issue. Senator Rusch added that often times, the noncustodial parent has multiple agreements.

- **Public Hearing Topics of August 26, 2021:** Virgena Wieseler stated the Department has kept minutes regarding public hearing items that were brought forth during the comment period or hearing to ensure as we move forward and perhaps look at legislative changes, Commission members will have the information needed to make recommendations regarding

child support guidelines. Members were asked to let Virgena know if they want DCS to compile any other information.

Incarcerated Non-Custodial Parent Discussion: Chairman Justice Myren reminded members discussion regarding incarcerated noncustodial parents is a topic the Commission needs to address and make recommendations on, and following discussion, would like the Commission members to come to a consensus.

- **Setting Support Obligation:** Carmin Dean provided information about incarceration and an option to automatically reduce the child support obligation verses modification of the child support order. DCS has an interface with the Department of Corrections (DOC) which provides an automatic notice to DCS when a noncustodial parent becomes incarcerated in the South Dakota prison system. Notice may include the date the noncustodial parent was incarcerated, the inmate number, and the date eligible for parole. When the noncustodial parent is released from prison or moves from one South Dakota prison to another, DCS is also notified. Per federal requirements, if a noncustodial parent will be incarcerated for 180 days or more, DCS must notify the incarcerated parent and the custodial parent advising they may request a Petition for Modification or a review of the child support obligation. Statistically, as of July 30, 2021, there were 1,596 incarcerated noncustodial parents. Of those, 1,420 were incarcerated five years or less; 134 were incarcerated 6-10 years; 31 were incarcerated 11-20 years; and three were incarcerated 21 years or more. Under the current Federal Regulations, DCS cannot impute at a certain wage amount; rather, must use actual earnings. Currently, income is imputed at minimum wage under South Dakota guidelines and the obligation is set at \$321 per month, which often results in arrearages. Some states automatically terminate the amount when a noncustodial parent is incarcerated; other states modify the child support obligation.
- **Modification Process:** There are pros and cons for automatically reducing the child support obligation and pros and cons for modification of the child support order. Some incarcerated parents may have other income, i.e., own land and get rental payments or inheritance and get monthly income, etc., or may be on work release, e.g., electricians, plumbers, or welders and may be able to pay more than another incarcerated person who is earning 25 cents an hour. DOC provides garnishments to DCS. If a Petition for Modification is required it may temporarily overburden the DCS Modification Unit, referees, and the court system for the first six months after the statute would become effective. UJS requires a \$50 filing fee or waiver to be submitted with each Petition if the petitioning party is not on Title 28 benefits (i.e., TANF, SNAP, Medicaid, etc.). The Circuit Court Judges review the waiver request and either approve or deny the request and sign off on the waiver. Should there be an exemption added for incarcerated individuals; some may have income. Automatically reducing the child support obligation would increase the number of modification hearings conducted by child support referees. Referees are paid \$274 per case (SFY 2022 amount). This may be the “cleanest” route to take as processes are already established and the party is responsible for modifying the order. DOC provides modification packets to incarcerated individuals; however, DCS can develop a process where a letter along with a Petition for Modification could be sent to the noncustodial parent when DCS receives the notification. Non-IV-D cases would be the exception as DCS does not receive the information on those cases.

Carmin Dean responded to comments and questions from Commission members. Once released from prison, it is the noncustodial or custodial parent’s responsibility to modify the child support order. Following release from prison, the noncustodial parent may not have the same earning potential, or may not be able to return to work for the prior employer. A question was asked how the custodial parent knows when the noncustodial parent is released from prison. Each situation is different. Some custodial parents may know, it depends on the

relationship. Some custodial parents may have been taking the child to visitations at the prison. Sometimes the custodial parent notifies DCS that the noncustodial parent is being released. DCS does not inform the custodial parent when an incarcerated noncustodial parent is released from prison. The public can use the South Dakota locator area of the DOC website to find out if an incarcerated person is released.

There is not an interface with the federal government nor county jails. There has been discussion between the states and the federal government regarding an interface for all states to use. Federal regulations were recently introduced and there are certain situations that could be considered a crime against a child or parent. In that situation, if the noncustodial parent failed to pay child support payments, he/she may not be able to get a modified order. These federal regulations have passed through Congress, in both the House and Senate. It is not known how many states have passed it. DCS support staff will inquire with Chad Edinger, the Region VIII federal representative, regarding how many Region VIII states have implemented the proposed changes for exemption from adjustment (e.g., act against the parent and/or child; incarceration as a result of nonpayment).

Senator Rusch shared concerns about looking for ways to reduce recidivism stating when there are no funds [upon release from prison], it's easy to get back into the correctional system due to committing further crimes. Representative Stevens stated he did not realize DCS notifies parents at 180 days; the burden is on the person incarcerated. He is leaning toward modification, but is concerned about when the federal regulations will go through.

If the case is IV-D, DCS will pay, and is eligible for 66% from the federal government. North Dakota automatically terminates their orders upon incarceration. Some referees have dismissed hearings - order may have been low; others have increased.

Rob Simmermon shared that he sees both sides of the situation. Some people are not in the right state of mind. They get incarcerated, and even if they get notification, they do not take steps to modify the order; they have a huge obligation, but no income. The process to petition for modification includes completing and submitting the petition for modification, which includes the name, address, other party, financial questions, etc. The petition is submitted to DCS for review, then following review is sent to the Clerk of Courts. A hearing is scheduled with the referee and the hearing is held. The person is given 10 days from the date of the report to file an objection. If there is no objection, the order is filed. DCS staff do what they can to help with the process, e.g., assist with completion of the petition. Sometimes the incarcerated individual cannot take calls. In that situation, Lutheran Social Services gets a signed release from the incarcerated person to help on their behalf. There is a \$50 filing fee, but a waiver form can be completed to request the filing fee be waived. Chairman Justice Myren stated if the form filed indicates there is no funding available, judges grant the waiver.

A question was asked if Odyssey tracks the number of petitions for modifications, if the system notes if a person is incarcerated, or how many petitions are filed verses how many petitions are denied.

- **Consideration:** Suzanne Starr will follow up on gathering information that may be available in the Odyssey system.

The federal government requires states to have a IV-D program. There is a match rate of 66% paid by the federal government, 34% paid by the state. The federal government also requires the child support program to pay the cost of a child support referee to hold a hearing. The

current rate is \$274 per hearing. Reimbursement offsets the cost of running the program. For Non-IV-D cases, UJS pays for the child support referee.

A question was asked about notification to the custodial parent when a noncustodial parent is released from prison and no longer incarcerated. Currently, when released from prison, there is no notification. Discussion was held that when DCS is notified they are released, DCS would establish a process to automatically print a notification in those situations to the parties. The person incarcerated could be in a state or federal prison. DCS workers hear information about the incarceration on the news or read it in newspapers. Workers also check county jails. Pennington County has a work program; some staff get lists of names of those incarcerated or notification that some inmates are on federal hold and waiting for pick up to federal prison.

Lindsay Riter-Rapp stated there is not a good interface between the UJS system and federal prisons currently. However, the Locate division will send requests to other states as a way to receive information. Carmin Dean stated DCS receives some good matches through the DCS computer system and uses the DOC locator to find noncustodial parents. Staff may also send information to another state where they think the noncustodial parent may be. She reminded members that work is being done at the federal level to get something set up with the federal prisons and state systems, but it could be a year from now, or five years from now when that is implemented. Members are content with the process the Department is currently following to locate noncustodial parents.

Chairman Justice Myren expressed concern about an automatic deduction in withholding stating that not everyone in prison has no income. The custodial parent needs to be allowed a hearing for those that have the ability to pay. If the Commission determines the automatic process is the best route, a process will need to be put in place to notify the non-incarcerated (custodial) parent. Rob Simmermon added it would be necessary to also consider the flip side, and notify upon release [from prison].

Amber Kinney asked if a parent is incarcerated, filed a petition and the amount is reduced, what is the process to look at it again? One of the parents would need to file a modification. They would need to go through the modification process. There is nothing in federal regulations to notify the custodial parent upon release. Oftentimes, the custodial parent knows before DCS that the noncustodial parent is being released. In situations of a three year or older modification, a review can be conducted, but if the review shows the order should be modified, it still requires the petition for modification to change the order. A question was asked if there are any penalties for not notifying DCS upon release from jail. There is no penalty now. The court cannot retroactively go back and reconstruct modification. Federal statutes prohibit retroactive modification.

Terri Williams discussed the option of automatic reduction with a particular review date for notification to parties. It is not known how many incarcerated individuals have other sources of income, there is no information on IV-D, federal, or county level. But, without automatic reduction, how many people will slip through the cracks with no modification? What about automatic reduction with a routine date to adjust modifications? Rob Simmermon also expressed concerns about a manual process noting concern that people won't be able to follow through when they should. He questioned what it would cost to implement an automated system and what would it look like.

Senator Rusch asked if forms accompany the letter. When a petition is requested, it is sent right away. They are given forms and notification. The document notifies them they are eligible

for review of their child support order, review for petition of modification, or to adjust the order. DCS can work with DOC to improve the process to be notified; however, sometimes DCS does not know where they went or what their address is. Senator Rusch stated the vast majority would be on some type of supervised release so somebody has their address.

Representative Stevens stated the system is already set up with the modification process and notification is already being sent. He prefers the modification process as it's the least cost and puts the burden on the person who made bad decisions, not the custodial parent, and regulation wise, DCS could work with DOC.

Chairman Justice Myren stated he would like divine consensus of the Commission and asked if members would like to reduce from the \$79 minimum order amount to something less, or nothing. Terri Williams recommended automatic reduction with reviews, but stated she does not like zero amounts. Discussion was held that the noncustodial parent may be incarcerated but not want to reduce the amount of the current support obligation. It's a personal choice on modifications. Some family members pay the obligation. DOC may take money out of noncustodial parent's account – some are welders or plumbers and get healthy checks for those individuals. Senator Rusch stated that per federal regulations, an inmate doing work for a private industry must be paid at least a comparable wage.

Virgena Wieseler indicated she goes back and forth between the two options to automatically reduce or modification noting she doesn't want to see people being released and starting out \$20,000 in arrears. She suggested the modification process could be improved and the petition application could be enhanced. DCS can look at the 10-page document and make improvements. Lindsay Riter-Rapp stated she is in the same position as Virgena and stated there are a lot of people who do not have income and the onus is on them; the application, for someone incarcerated, could be much simpler. When a modification is requested, tools need to be given to the custodial parent to request modification on the back end.

Terri Williams addressed child support arrears that should not have been accruing if parties came to an agreement to forgive the arrears, or if the noncustodial parent provides a lump sum payment. If they are not able to modify, can they do something after the fact for forgiveness of arrears? There is a statute regarding custody to address this, but some judges will not approve forgiveness. Carmin Dean stated the federal regulations prohibit the ability to retroactively modify the order. Chairman Justice Myren stated people should be responsible for their own actions. It's the easiest process for the person to start the process. He recommended DCS investigate the potential of providing the nonincarcerated (custodial) parent notice when an incarceration ends.

Chairman Justice Myren stated it appears Commission members are leaning towards modification process, with some modifications, e.g., improved application, conversations with DOC to help incarcerated individuals, release date, and providing some type of packet as a tool for custodial parents.

- **Consideration:** If the decision is to follow the modification process, the referee could ask for the potential release date and add it to the order. The Petition for Modification form should be simplified for incarcerated noncustodial parents and include a release date for incarcerated individuals.
- **Consideration:** DCS should work with DOC on a process to assist individuals in filing a Petition for Modification.
- **Consideration:** Notification by DCS to the custodial parent when a noncustodial parent is released from prison. Add to the current process to make it more fair for both

parents. Create a packet for the custodial parent providing the tools needed to make a decision on modifications.

- **Consideration:** What would it cost to implement an automated system and what would that process be? Determine if the UJS Odyssey system can provide the number of incarcerated modifications.
- **Consideration:** Reduction of child support to a reduced amount, what does it do to health, daycare. If minimum is \$79 like it is currently, if automatic deduction, lose those percentages. If modify, goes through percentages for review. Some may have a shared parenting situation. If reduced to other obligation, can impact there. Can be looked at and reevaluated.
- **Consideration:** Look at statutory and administrative rules requirements to notify DCS when released from county jail.

Subgroup Discussion: The Commission recessed briefly and reconvened at 3:10 PM CDT.

- **Abatement Subgroup (Senator Rusch, Representative Stevens, Terri Williams, Suzanne Starr):** Suzanne Starr briefed Commission members regarding the work of the Abatement subgroup. The subgroup met via Zoom on September 24, 2021, with all members present. The group held discussion regarding statutes and concerns surrounding abatement and identified the following actions: 1) make clearer that referees can grant abatements, not just the courts; 2) burden on the party seeking to secure abatement; 3) establish a clear set of criteria for establishing abatement. Terri Williams made contact with the other 11 referees to inquire that they would like to see in this area. The next subgroup meeting is October 11, 2021, and the subgroup will report their findings to the Commission at the Rapid City meeting on October 27, 2021. Senator Rusch stated input received was that more specific criteria was needed in regard to abatements, adding that the above steps would lend towards more consistency. Representative Stevens stated the current statute is vague and ambiguous and it is an issue statewide for what should or should not be considered as “over and above” to raise a child and suggested to set out a clear view as to what is considered and what is not.
- **Federal Rule Changes Subgroup (Virgena Wieseler, Carmin Dean, Nichole Brooks, Jeremy Lippert):** Carmin Dean shared information from the Federal Rule Changes subgroup. In the meeting materials packet is an initial draft of statute changes the subgroup looked at. The version in the packet was given to Chad Edinger, the Region VIII federal representative for comments and review. Carmin received Chad’s comments late yesterday afternoon (September 29, 2021) with additional recommended changes. Carmin provided a brief overview of the draft legislation to include federal requirements pointing out a few recommended changes: wording added to bring in Self Support Reserve amounts [not yet finalized by the Commission] and the new obligation schedule would be inserted; rebuttable presumption of employment at minimum wage statute may not be needed and will be part of the subgroup’s review; allowable deductions from monthly gross income, removal of withholding at IRS for single taxpayer for income tax withholding amount; remove provision for incarceration requirement; change date from July 1, 2017 to July 1, 2022 to allow orders entered to be modified without showing a change of circumstance; changed when guidelines are updated; revised when imputation is factored in; look at when determine income. Also, need to draft language for how to handle incarceration. How it is worded will depend on how the Commission plans to proceed (modification process or automatically reduce). Outdated statute will be repealed. DCS is working on other revisions to address the Region VIII federal representative’s concerns and revisions. The subgroup will meet again to further discuss and will send an updated draft review to all Commission members. Terry Williams indicated there is confusion on the interpretation of [SDCL 25-7-6.16](#), *Medical support--Insurance--*

Computation of costs--Apportionment between parents and how to calculate. If parents are providing insurance, the cost is prorated between parents. If parents are not providing insurance, the reasonable cost is set at 8% of the net income. Terri's interpretation is that the only amount that can be allocated between parents is the 8% of net income regardless of the cost; the cost of insurance should be prorated between parents if insurance is provided. If no insurance is provided, the state can mandate if at 8% of parent's net income. Calculation is using the DCS online calculator. Chairman Justice Myren asked for suggested language. This interpretation would have no impact on the schedule.

- **Consideration:** Virgena Wieseler reminded members that Sections 5 and 6 of their binders include child support statutes. If members see any other statutes they would like to address, let Virgena know. DCS will review with Terri Williams and provide information for the next meeting regarding how to make [SDCL 25-7-6.16](#) clearer.

Dr. Jane Venohr, Center for Policy Research – Considerations for Guidelines Changes: Dr. Jane Venohr, Center for Policy Research (CPR), has a contract with DCS to educate and help the Commission meet the new federal child support guidelines. Federal regulation requires that state guideline reviews consider the findings from analyzing data on guidelines deviations, income imputation, default, application of the low-income adjustments and payment data. To fulfill this federal requirement, DCS provided the Center for Policy Research an extract of all orders established or modified in SFY 2018 – 2019 and all payments in the subsequent year, SFY 2019 – 2020. Preliminary findings from the analysis of case file data shows the guidelines deviation rate in South Dakota was 4%; low in comparison to other states. South Dakota is meeting the federal requirement with keeping deviations at a minimum. For income imputation and defaults, CPR used orders of minimum wage as proxy for a guideline and workweeks of 35 hours per week. More than half of parents (56% of obligated parents and 66% of receiving parties) appeared to have income imputed at \$1,324 or \$1,380 gross per month. This is monthly income from minimum wage employment at 1,820 hours per year for CY 2018 and CY 2019 (where 1,820 hours is the annual equivalent of a 35-hour workweek). Eighty-eight percent (88%) of incarcerated parents had incomes based on minimum wage and 1,820 hours per year. This suggests that income is usually imputed to incarcerated parents and few have actual income. Two percent of all cases examined are set at the minimum order amount.

Dr. Venohr also referred members to the Payment Data section on page 5 of the memo which shows how much is paid. It shows payments are higher among orders that have deviations, but that may reflect that payments are generally better among higher incomes and higher income parties are more likely to have deviations rather than deviations alone cause better payments. Incarcerated parents don't pay much. On average they pay \$400 annually or \$33 a month; 1.4 months out of 12 months; and 10% of current support due. What this says is that any changes to guidelines amounts for incarcerated parents are not likely to affect how much families are getting in child support because families of incarcerated parents are receiving little child support now.

Discussions to date have focused on updating the child support schedule for more current economic measurements of child-rearing expenditures, current 2021 price levels, and adjusting for more current data on South Dakota's incomes. The existing schedule is based on economic information available in 2016. Dr. Venohr provided information regarding updating the schedule and additional considerations for very low and very high incomes. The current schedule includes a minimum order of \$79 per month and a self-support reserve (SSR) of \$871 per month in the emboldened area of the schedule. The existing SSR is the 2016 federal poverty level for one person times the 2014 South Dakota price parity. The minimum order was obtained by taking the highest income (\$950) from the net income range of \$0 - \$ 950 in the schedule and subtracting \$871 SSR = \$79. This is the amount of the basic obligation for the first income interval on the

schedule. The highest income (\$1,350) of the next net income range of \$1,301 - \$1,350 in the schedule minus \$871 SSR = \$479 is the schedule amounts for two and more children for this income bracket. Since \$345 is how much families of this income range spend on one child according to the economic data on child-rearing, \$345 is used for the one child amount in this income bracket. Whenever the amount based on economic data on the cost of raising children for a particular number of children and income range was less than the SSR-adjusted amount, economic data is used. Areas emboldened on the schedule are adjusted for the self-support reserve.

Alternative updates of the self-support reserve and minimum order amount are listed on page 3 of Dr. Venohr's memorandum dated September 22, 2021:

- Option A includes no SSR.
- Option B provides a minimum order of \$79 and \$871 SSR using 2016 federal poverty levels (i.e., retaining existing minimum order and SSR).
- Option C used the same method, but using 2021 federal poverty levels for one person and 2019 South Dakota price parity.
- Option D is the same as Option C only a minimum order of \$50 per month.
- Option E provides larger minimum orders for more children and does not increase the basic child support obligation by \$50 when the combined net income increases by \$50.

The perceived strengths and limitations of each option are listed on page 5. What change to make is a policy decision to be made by the Commission.

The minimum order is important because it will probably be the basis of the order amount for incarcerated parents once South Dakota adopts changes to comply with the federal requirement to not consider incarceration to be voluntary unemployment. The incomes of incarcerated parents will likely fall into the lowest income range of the South Dakota child support schedule. With regard to the proposed federal rule change made in 2020 to allow an exception to that federal requirement for incarcerated parents who were incarcerated due to a crime against the child or family or for criminal non-payment, few states make those exceptions. Delaware and Kansas currently make that exception, but most states do not. Pennsylvania has proposed language that will become effective January 1, 2022 that will make those exceptions. Missouri just proposed language in its court-ruled guidelines that incarceration could not be considered voluntary unemployment and made no exception. The Missouri Court received public comment that it should make an exception based on the 2020 proposed federal rule change. Despite the public comment, Dr. Venohr stated that Missouri plans to stick to not making exceptions because the federal rule change has not been finalized, there are few cases that would be eligible, the exception would probably not provide more money to the family because most incarcerated parents have no to little income, and providing for the exception would create more burden on agency staff due to information gathering, (i.e., information about the crime would also be needed) with no to little benefit to the family. Dr. Venohr also offered some insights on providing simplified information and forms to incarcerated parents once the agency learns of their incarceration. Washington and Texas had demonstration projects that tested the impact of simplified information and forms. The state of Washington put together a more friendly packet, similar to what Justice Myren mentioned, and their rate of modification requests increased from 9% to 41% among incarcerated parents.

Representative Stevens asked Dr. Venohr about Option D which shows a \$50 minimum order in each column, whether you have one child or six children. Representative Stevens also asked Dr. Venohr what the argument would be to decrease the minimum order from \$79 to \$50. Dr. Venohr

explained that the current amounts are based on data available when the schedule was last updated: 2016 federal poverty level and 2014 price parity. There is more current data available in 2021. Using the 2021 data would reduce the minimum order below the current minimum order of \$79. Only 2% of cases fell within that first row of income where the minimum order applies according to the case file data. The proposed 2021 update provides for a SSR of \$950 with minimum order of \$50. Fifty dollars (\$50) is not the cost to raise a child; it's an amount to adjust for the self-support reserve. Fifty dollars (\$50) is a common minimum order among other states although more states are adopting \$0 as their minimum order because often, even some very low-income parents can't pay \$50 per month. Still some states think parents should be required to pay something.

Dr. Venohr referred members to Table 4. Anything in the emboldened/blue shaded area does not reflect what it costs to raise a child(ren). It recognizes some parents do not have an ability to pay. The parts of the schedule that are not shaded/emboldened reflect economic data on child-rearing expenditures for that family size and combined income. The lower income emboldened/shaded area is designed to meet federal requirements that require a low-income adjustment to promote payment and parent involvement among low-income parents.

Another concern was whether \$50 would be adequate for additional expenses such as extracurricular activities. Terri Williams clarified extracurricular activities for all income ranges could be addressed through the deviation statute, [SDCL 25-7-6.10](#) which provides for other support that benefits the children. Dr. Venohr also clarified that the schedule includes any expense (besides childcare and extraordinary medical expenses) that a family of that income and family size would incur on average. So, if a family of that income and family size typically has expenses related to children playing on a football team, the average amount expended for football would be considered. If the expense is not typical it would not be averaged into the expense. For example, not all families incur the expense of a child on a traveling hockey team. That would not be an average expense so wouldn't be included in the schedule.

Updating the schedule for more current economic data causes some extraordinarily large increases at very high incomes. The comparisons explore capping the increases at 10, 13, and 15% between the existing schedule to the proposed, updated schedule to alleviate price sticker shock. Prices have increased by about 13% since the existing schedule was developed. Only one case fell into this income from the DCS data extract. Rob Simmermon asked how many cases total fall into the range with the 10 percent or more increases. Dr. Venohr clarified that the DCS data extract could not be used to estimate that because it only considered DCS cases in which the DCS automated guidelines calculator was used when the order was established or modified and only those DCS orders that were established or modified in SFY 2018-2019. Dr. Venohr also clarified that obtaining the information to answer Mr. Simmermon's question would require data collection of court files. DCS does not have that data. Nonetheless, Census data suggests that few South Dakota workers and families have monthly incomes in excess of \$10,000 net. Dr. Venohr further clarified that the DCS extract was pulled to respond to the federal requirement to analyze deviations, income imputation, etc. Carmin Dean added DCS will be making system enhancements to improve the data available to meet the federal data requirements for South Dakota's next review.

In conclusion, Dr. Venohr reminded the Commission that a low-income adjustment is required by federal regulation. South Dakota's low-income adjustment consists of a self-support reserve and a minimum order based on data available in 2016.

Policy decisions will need to be made on the following:

- Possibly increase SSR from \$871. Decide what the minimum order should be and then decide if there should be an increase in the minimum order for two or more children. Can keep it at \$79. Could change it to \$50. Could make it \$0. The decision curtails on what decisions are made for incarcerated parents since the minimum order will likely apply to incarcerated parents since federal regulation requires that states provide incarceration cannot be considered voluntary unemployment. To this end, the income of incarcerated parents would put them in the lowest income interval of the schedule. Once the Commission makes a decision on whether a zero order or minimum order is appropriate and the amount of the minimum order if they favor a minimum order, the update of the low-income adjustment and its gradual phase-out to schedule amounts based on the cost of child-rearing expenditures will be clearer.
- Could apply a cap to the percentage increase from the existing schedule amount to the updated schedule amount (see 10, 13, 15% chart examples). During the last review, the Legislature made a cap of 4% on their own. Thirteen percent (13%) represents how much prices have increased. The agency threshold for a modification is at least a 20%, (\$25) change.

The Commission on Child Support needs to make decisions related to the above bullets by the end of October in order for Dr. Venohr to finalize the schedule.

Chairman Justice Myren asked Dr. Venohr what her economic view is regarding consensus of incarceration and asked if she had anything to add for consideration. Dr. Venohr stated the right questions were asked during the discussion.

Public Comment at 4:30 PM – 15 minutes for the public to address the Commission: Chairman Justice Myren stated the Commission is allowing a 15 minute public comment period during the meeting, but there is also a public hearing tonight at 6:00 PM. Two minutes were allowed for individuals wishing to do so, to address the Commission.

Frank Smith asked if extra-curricular activity monies are built into the schedule. Chairman Justice Myren stated costs that are built into the schedule include some of those expenses a person would ordinarily pay for normal things most families would participate in, such as high school football or basketball activities.

Tom Pischke referred to the low-income earners, those shaded in the chart, noting there is no incentive for them to increase their income. The problem with the way the system is set up, is if you increase your income, DCS takes more child support. He stated it is more of a wealth redistribution system than a child support system. Two parents with a combined income of \$80,000 - \$120,000, it's pretty much the same for all kids. You pay a whole lot more for \$120,000 than \$80,000. Regardless of the amount of money you make, you are still going to spend the same amount. With the proposal, how many other cases would have an increase?

Reminders: Chairman Justice Myren reminded members about upcoming meetings and the ability to provide testimony during the evening public hearing. Future meeting dates are as follows:

- **Rapid City:** Wednesday, October 27, 2021 at 1:00 MT – evening public hearing 6:00 – 8:00.
- **Pierre:** Thursday, November 18, 2021 at 1:00 PM CT – final meeting in Pierre with Zoom and in-person options.

Virgena Wieseler stated there may be a change in the location for the meeting in Rapid City. Should changes be necessary, a press release will be publicized.

Adjourn / Recess: Motion to adjourn by Senator Rusch. Seconded by Virgena Wieseler. Members voted unanimously to adjourn. Motion carried. Meeting adjourned at 4:47 PM CDT. The Commission will recess until 6:00 PM when the Commission reconvenes for the public hearing.

Reconvene / Public Hearing:

Join Zoom Meeting

<https://state-sd.zoom.us/j/94014011890?pwd=K0tWQ3JXa3duZVVOsjE2OTVSZG5Td309>

Meeting ID: 940 1401 1890

Passcode: 114898

DRAFT